Working Group on Arbitrary Detention: Preliminary Findings from its visit to Mongolia (3 to 14 October 2022)

I. Introduction

At the invitation of the Government, the United Nations Working Group on Arbitrary Detention conducted an official visit to Mongolia from 3 to 14 October 2022. The Working Group was represented by Ms. Elina Steinerte (Latvia) and Mr. Matthew Gillett (New Zealand) and accompanied by staff of the Office of the United Nations High Commissioner for Human Rights.

This is the first official visit of the Working Group to the country and the Working Group extends its gratitude and appreciation to the Government of Mongolia for the invitation to undertake this country visit and for its cooperation. In particular, the Working Group met with the officials of the Ministry of Foreign Affairs, Ministry of Health, Ministry of Justice and Home Affairs, Ministry of Labour and Social Protection, Office of the Prosecutor General, Supreme Court, Ministry of Defense, Subcommittee on Human Rights of the State Great Hural, General Intelligence Agency, National Human Rights Commission, General Judicial Council, Mongolian Bar Association and Advocates Association of Mongolia.

The Working Group would like to thank the United Nations Country Team, the Resident Coordinator and their staff for supporting the visit. The Working Group also recognizes the numerous stakeholders within the country who shared their perspectives on the arbitrary deprivation of liberty, including representatives from civil society and lawyers. The Working Group thanks all of them for the information and assistance they provided.

The observations presented today constitute the preliminary findings of the Working Group. They will serve as a basis for future deliberations between the members of the Working Group at its forthcoming sessions in Geneva. The Working Group will then produce and adopt a report about its visit and submit it to the Human Rights Council at its 54th session in September 2023.

The Working Group made both announced and unannounced visits to 21 facilities in Ulaanbaatar and Tuv province, including prisons, police stations, sobering-up places, temporary protection shelters, the National Center for Mental Health, substance addiction treatment center, residential care center for older people and detention unit for foreign nationals. The Working Group concluded that two of these facilities, namely the Child Protection Response and Temporary Protection Shelter and the Batsumber State Residential Care Center for Older People are not places of deprivation of liberty. It was able to confidentially interview around 65 persons deprived of their liberty. The Working Group received immediate unimpeded access to all places it wished to visit and is grateful to the Government for its exemplary cooperation in ensuring this.

II. Good practices and positive developments

The National Human Rights Commission (NHRC)

Initially established in 2000 and composed of three Commissioners, the National Human Rights Commission of Mongolia (NHRC) is charged with the broad mandate of the human rights protection and promotion. The Working Group notes the 2020 revision of the Law on the National Human Rights Commission of Mongolia and praises the advancement of the NHRC's mandate that these revisions are endeavoring to bring about, most notably to ensure compliance with the Paris Principles. The revisions have been made in the appointment process of the Commissioners, bringing about more transparency as well as ensuring that the annual report of the NHRC will be heard at the Parliament. The Working Group particularly welcomes strengthening of the NHRC's mandate to compel change by issuing binding directives and recommendations, in accordance with the article 26 of the revised Law. The failure to comply with these measures within a set period of time may serve as a legal basis for dismissal of the relevant authority. Since 2022, the NHRC delivered 17 such directives and 27 recommendations. The 2020 revisions as well as the adoption of the Law on Human Rights Defenders in April 2021 and the Law on Protection of Personal Data in December 2021 have led to an increase in number of Commissioners to seven, with three Commissioners now being vested with specific thematic portfolios.

The Working Group also recalls that the budget of the NHRC is vital to it being able to carry out its mandate independently and effectively. It therefore commends the introduction of legal provisions to strengthen its financial independence by including the NHRC budget in the State consolidated budget. The incremental increase of the NHRC budget, with 4,5 billion tugriks being allocated for 2023, will further enable the law's effective implementation. The Working Group urges further allocation of the requisite funding to the NHRC and especially the new thematic functions that have been vested with it to enable it to fully and effectively discharge its functions.

The National Preventive Mechanism

The Working Group strongly welcomes the designation of the National Preventive Mechanism (NPM) in Mongolia, which has been overdue in accordance with Mongolia's ratification of the Optional Protocol to the Convention against Torture (OPCAT) in 2015. The mandate of the NPM of Mongolia has been vested with the NHRC with a designation of a Commissioner in charge of the NPM work. This is a permanent role, which will remain in the portfolio of the designated Commissioner for the duration of its mandate, whose work will be supported by the newly established NPM Unit. However, the Working Group notes with concern that, whilst it was designated that the Unit would be composed of ten experts from various disciplines, due to required budgetary savings the Unit will operate with only five staff for an initial period of two years. Moreover, the Working Group is concerned about the role of the Civil Service Council in the selection of the staff of the NPM Unit and the minimal role allocated in this to the Commissioner in charge of the NPM. The Working Group underscores the importance of ensuring the ability of the NPM to function independently and urges the Government to ensure the autonomy of the NPM in selecting its staff. It is also crucial that the NPM Unit is able to commence work with a full complement of ten staff as a matter of urgency especially given the geographical expanse of Mongolia with some of the places of deprivation of liberty being located in very remote regions of the country.

Further, the Working Group was informed that a budget for the NPM work has been allocated as part of the overall NHRC budget and it has been earmarked in the overall NHRC budget, which is a positive. However, the Working Group is seriously concerned that the NPM does not have full financial independence in that the Commissioner is unable to allocate the funding designated for the NPM work independently, without the authorization of the Chief Commissioner and the Head of Administration of the NHRC. This has particularly negative effect upon the ability of the NPM to carry out unannounced visits to places of deprivation of liberty, which is essential to its mandate. The Working Group urges the Government to safeguard the financial independence of the NPM, especially as it relates to the ability to carry out unannounced visits.

The Working Group received testimony of the visits carried out by the NHRC and the NPM, which is highly commendable. The Working Group recalls the vital role that regular independent oversight has in preventing arbitrary deprivation of liberty and urges the Government to further strengthen the ability of the both the NHRC and the NPM to carry out its functions independently and effectively. To this end, the Working Group urges further increase of financial resources at the disposal of the NPM to enable it to implement its mandate effectively and independently.

Protection of human rights defenders

The Working Group welcomes the recent adoption of the Law of Mongolia on the legal status of human rights defenders, which came into force on 1 January 2022. The strong involvement of the civil society in the drafting process is highly commendable although the Working Group observes that the revision was conducted by a Parliamentary Working Group with few opportunities for civil society input at that stage.

This Law provides a strong protection to the work of human rights defenders. Mongolia is the first Asian country to adopt such specific legal framework and this is essential in a democratic society governed by the rule of law. The Law establishes a Protection Mechanism and a NCHR Commissioner has been designated to coordinate the work of such mechanism. The Working Group commends these steps and urges the effective implementation of this Law in practice.

Notwithstanding this, the Working Group is seriously concerned over some specific provisions of the law. Article 5.1.5 requires the human rights defenders to "respect honour, reputation… of others" and similarly to this, article 8.1 prohibits human rights defenders from damaging the honour, reputation or "fame at the working field" of others. Noting that the legitimate work of human rights defenders often involves being critical of and challenging the existing policies and practices, such vague and broad wording may be misused to silence and criminalize their work. Article 7 restricts the resources that human rights defenders may receive, by prohibiting funding from such entities as organizations or persons carrying out activities that are considered "terrorist, extremist or that harm national unity". Framed in very broad terms, this provision may be used to limit the funding sources for the vital work of the human rights defenders thus fundamentally undermining the ability of human rights defenders to fulfill their functions.

The Working Group recalls that detaining individuals on the basis of their activities as human rights defenders violates their right to equality before the law and equal protection of the law under article 7 of the Universal Declaration and article 26 of the Covenant. The status of human rights defender is among the protected statuses pursuant to article 26 of the Covenant.

Amnesty Laws

The Working Group was informed of a number of Amnesty Laws passed in the last decade, including, the 2021 Amnesty Law which was adopted on the 100th anniversary of Mongolia. In accordance with this Law, some 2000 prisoners were thus released or had their sentences reduced, which is positive. The Working Group also commends the work of the NHRC in assisting a number of those individuals who had been excluded from amnesty to successfully challenge that exclusion. The Working Group urges the Government to include all prisoners in the scope of any further amnesty laws, since the 2021 Amnesty Law excluded those sentenced for serious crimes.

Detention in the context of migration

The Working Group was pleased to learn that there is no practice of systemic detention in the context of migration. The Working Group was informed that in 2022 only seven foreign nationals had been detained due to breaching their visa conditions; there was no person held at the immigration detention facility during the visit. It was also informed that there is a presumption against detention, especially against detention of families, women and children, which is highly commendable. The Working Group encourages the Government to further its approach not to detain in the context of migration and in this regard invites the revision of the current provisions of the Law on Legal Status of Foreign Nationals, which permits detention ordered by a judge, for a period of 30 days which can be extended to 6 months, if renewed by a judge after each 30 days. At the end of six months, the person must be released but can be detained again and there is no limit to the number of times that a person can be thus detained. While in practice no person has been held for longer than six months, the Working Group urges the Government to bring this legal provision in line with international human rights law. Moreover, the Working Group recalls the importance of ensuring that immigration detention facilities are located in different premises from the criminal justice facilities.

Since partial mobilization announcement in Russia on 21 September 2022, Mongolia has faced large influx of Russian citizens. Since there are no visa requirements for Russian citizens to enter Mongolia for 30 days, people have been able to arrive freely and a number of special arrangements have been put in place to assist with legalizing their status after the passing of the initial 30 days, including arrangements for different types of visas and even temporary residence permits. No Russian citizens have been detained in this recent migratory situation context. The Working Group lauds the approach adopted by the Government in this regard.

Care for older persons

The Working Group visited the Batsumber State Residential Care Center for Older People in Tuv. It was informed that the admission into State care institutions of persons in need of assisted living, such as older persons and of persons with a disability, is regulated by the 2013 Order A-157 of

Ministry of Labour and Social Protection. The admission is voluntary and, if the application for admission is submitted by a caretaker, the consent of the older person to be admitted is essential; equally residents can be discharged at their request. The Working Group concludes that it is not a place of deprivation of liberty and commends the voluntary admission approach adopted.

The Working Group notes, however, that despite positive legislative and policy measures undertaken by Mongolia, the provision of care for older persons requires further attention. It was informed that there is a shortage of staff willing to work in remote areas with little financial and social security incentives. Given the large size of the facilities, the staff is often facing an increased workload compared to their colleagues in other settings. While the commitment of the staff is laudable, this is not sustainable and systemic and strategic approach is required. The Government of Mongolia is invited to address these challenges by, for example, reconsidering assessing as "hard" the jobs performed in such settings according to the job qualification system of the 2021 Labour Law and ensuring continuity of applicable strategic policies and guidelines as well as considering providing the care for older persons in assisted living facilities of smaller size.

III. Main findings

Revisions of 2017 in the Criminal Code and the Criminal Procedure Code

The 2017 revision to the Criminal Procedure Code (CPC) introduced several amendments to align Mongolia's arrest and detention system with its international human rights law obligations. According to the amended CPC, the initial detention in police custody cannot exceed 6 hours. The maximum period of detention without judicial oversight is reduced from 72 hours to 48 hours, which is commendable.[1] Furthermore, the detaining authority immediately must inform the Prosecutor once an arrest occurs,[2] and the Prosecutor must then seek judicial authorization for the ongoing detention of the suspect. If 48 hours expires with the court's authorization being delivered, the detention centre must inform the relevant authorities and release the suspect.[3] The judge's decision on detention must be objectively justified due to a risk of flight, evidence tampering, harm to persons, or other enumerated reasons.[4] Whereas judges previously would rule on continued detention without a hearing, they are now required to hold a hearing on the matter in the presence of the suspect and the defence lawyer, as well as the prosecutor. In cases of wrongful arrest or detention, officials themselves can be prosecuted under article 13.9 of the Criminal Code (CC) and face fines, community work, and detention for a period of up to a year.

The Working Group welcomes these adjustments to Mongolia's regulatory framework, which have increased the possibility for a suspect to meaningfully challenge the basis of their detention and avoid arbitrary detention. These reforms, together with the moves to amnesty large numbers of prisoners, reportedly led to a decrease in the overall number of persons in pre-trial detention.

Whilst the 2017 amendments to the CPC are positive in and of themselves, the implementation has revealed shortcomings in the functioning of various parts of the criminal justice system, risking undermining Mongolia's adherence to international human rights law. The Working Group received consistent testimony that it is customary for the police to initially summon people to the police stations as witnesses and they are normally *de facto* not free to leave. Many reported having spent the whole day in police stations in such circumstances. This time however is not officially counted as part of the permitted 6 hours of police detention nor the 48-hour period. People are summoned to attend interviews with the police as witnesses, despite the fact that it was apparent when they were questioned at the police station that they were considered to be suspects. This may deprive suspects of important protections including the opportunity to consult with a lawyer and the right to be cautioned against self-incrimination. Once the person is officially in police custody for the permitted 6 hours, these 6 hours customarily are not counted as part of the

[1] Human Rights Committee, general comment No. 35 (2014), paras. 32-33.
[2] Mongolian CPC, article 30.9.
[3] Mongolian CPC, article 31.12.2.
[4] Mongolian CPC, article 31.4.

48 hours period. The Working Group consistently observed that the period of police custody in vast majority of cases significantly exceeded the permitted maximum period of 48 hours.

With five years having passed since the amendments of the CPC took effect, and with multiple interlocutors having referred to such shortcomings arising on repeated occasions, the Working Group requests the Government to review the implementation of its criminal procedure, in the following respects, as a matter of urgency.

Police custody

In relation to the questioning of suspects in interrogation rooms at police stations, the Working Group was informed that suspects are typically not at liberty to leave from an interrogation. Following interrogation, they are usually formally arrested and transferred to pre-trial detention. Under international human rights law, a deprivation of liberty occurs when a person "is being held without his or her free consent"[5] and that the deprivation of liberty can occur in any type of location, which does not need to be officially labelled as an arrest or detention to engage the protection against arbitrary detention. Equally, any period of time, even if for few hours, qualifies as detention. In the Mongolian context, if a suspect is not at liberty to leave from an interrogation, then the suspect is in fact detained from the moment they enter the police station and come under the control of the relevant inspector. The video and audio recording equipped interrogation rooms, which are mandatory under Mongolian law, are a significant deterrent against serious violations such as mistreatment and torture but are not sufficient in and of themselves to ensure that suspects enjoy their full due process rights as required under the international human rights law.

In addition to interrogation rooms, the Working Group viewed two other types of detention spaces at some police stations – the sobering up rooms, and the locations where those sentenced to "arrest" as a sanction for infringements (petty crime) were held for up to 30 days. Although each of these types of locations is regulated by a specific legal framework, each also constitutes a place of detention, and so the international human rights law relevant to arbitrary detention applies. Importantly, the right to judicial review within 48-hours of being taken into custody applies from the moment of being deprived of liberty and the clock does not reset if a detainee is moved from one of these types of spaces to another. The Working Group noted this as a particular problem if the person is first taken to the sobering up facility, where the maximum permitted period is 24 hours and then transferred to the police custody where the maximum permitted period is 48 hours. In such circumstances it was common for the clock to be reset at the time of the transfer meaning that the actual detention period would exceed the permitted 48 hours. Moreover, if people are detained on a Friday, because judges do not normally work over the weekend, this results in further difficulties adhering to the 48-hour limit. This must be addressed as a matter of priority.

In terms of the sobering up facilities, the Working Group observed these cells in multiple locations and found that they were generally basic but had some facilities, including for medical examinations. Registers indicated that those detained were generally released within the 24-hour limit and that medical checks were conducted and recorded, and CCTV were operational. However, the Working Group was concerned to learn that during some national holidays, sometimes amounting to 7 consecutive days, people are left in sobering-up cells, and that LGBTI people are often verbally and physically abused. It is important that sobering-up centres avoid perpetuating a punitive approach, particularly given that the individual in question has not been subjected to any due process when brought into such centre, and any verbal or physical abuse of those placed in sobering up centres is prohibited and sanctioned.

Procedural guarantees and fair trial rights

The Working Group noted with grave concern the extremely high percentage of arrests without warrants. In 2020, 99.3% of arrests were performed without court warrant, and in 2021, this figure was 98.3%. The Working Group considers it entirely incompatible with Mongolia's international human rights obligations that such an extremely high percentage of arrests are conducted without

[5] A/HRC/36/37, para 51. See also CCPR/C/GC/35at para. 5.

ex ante judicial vetting. Although the CPC of 2017 requires *ex post facto* judicial authorization within 48 hours in such cases, the person's rights will have already been prejudiced if there was no proper basis for the arrest. The Working Group is particularly concerned by the prevalence of arrests without warrants by such specialized agencies as the General Intelligence Agency and the Anti-Corruption Agency. Given the specifics of investigative work by these agencies, it is inconceivable that they would not seek judicial warrants in the vast majority of cases. Arrests without warrant are only permitted in specific, exceptional circumstances under international human rights law, such as when a suspect is found in *flagrante delicto*, but must never be the presumptive norm for detention processes. The Government must address this urgently.

The Working Group was also preoccupied by the significant role that confessions have in the Mongolia investigative practices and subsequent legal proceedings. Of the 12,000-13,000 cases decided annually, around 40 percent reportedly involve confessions. While the use of confessions in criminal justice is a feature of most legal systems and is not problematic *per se*, this should not be systematically resorted to as a substitute for proper investigations designed to establish objective facts. Worryingly, instances were reported in which confessions were coerced from suspects against their will, through pressure, threats, and intimidation. Such practices violate international human rights law, and are not conducive to effective fact-finding, as reaffirmed in the Mendez Principles, which the Working Group endorsed in 2021.[6]

Related to this is the use of the expedited procedure for less serious criminal offences. If the offence carries a maximum sentence of 8 or more years imprisonment, then a criminal case must be filed and there must be a trial before a criminal court. Conversely, if the offence carries a maximum sentence of below that, the suspect may choose to undergo an "expedited procedure", conditional upon their acceptance of responsibility for the crime. Again, the existence of an expedited procedure is not *per se* contrary to the human rights norms. In fact, it can be a means of maintaining efficiency in the criminal justice system and reducing the courts' caseload. However, the systemic benefits must not come at the expense of individuals' right to legal assistance. In particular, the Government must ensure that the possibility of the expedited procedure is not used to induce or coerce confessions against the will of suspects.

Further, although Mongolian law recognizes the suspect's right to access a lawyer before making any confession of guilt and officials conducted arrests are obliged to inform arrestees of their due process rights (the "Miranda" rights), defence lawyers and detainees informed the Working Group that suspects are frequently pressured and intimidated to confess and statements they had provided previously as witnesses are used to coerce. Thus, many confess responsibility prior to seeing a lawyer. The right to legal assistance must be conveyed to suspects upon their arrest by the law enforcement officials and duly respected and facilitated. No confessions without the presence of a lawyer should be admitted into legal proceedings.

Specific timeframes for investigative and judicial processing of cases are set by the regulatory framework. However, the heavy caseloads faced by the investigators, prosecutors and judges alike mean that the set time limits are not always adhered to and the ability of these professionals to give detailed consideration to each case on their docket is adversely impacted. Moreover, there are targets set for investigators and prosecutors in terms of how many cases they must process, with "winners" announced at the end of each month who receive salary bonuses and other benefits. In practice such incentives lead to professionals rushing cases to achieve the targets, significantly decreasing the quality of their work and may in fact result in arbitrary deprivation of liberty. Since presenting this observation, the Working Group has been informed by the General-Prosecutor's Office and the General Intelligence Agency that this practice has ceased.

Additionally, the Working Group is concerned that defense lawyers do not have full access to their clients' files especially to contest the necessity of pre-trial detention. Article 32.1 of the Criminal Procedure Code stipulates that full access to the case file must be provided to the defence upon completion of the investigation. In practice, since the imposition of pre-trial detention is

[6] A/HRC/51/29, paras. 53- 55.

usually decided while the investigation is still ongoing, this provision is used to deny entirely access to the case file to defence lawyers, significantly impeding their ability to contest the pre-trial detention. The Working Group learned that defense lawyers must "imagine" the evidence supporting the request for pre-trial detention and contest its imposition "in the dark".

Furthermore, if and when access to case file is granted, the defense lawyers are often only given very short notice that the file is ready for them to see, commonly on the day that it is due to be transferred to the prosecutor. Even if the defence lawyer is able to make it to the investigator's office, they are prohibited from taking photocopies or even photographs of the materials, and so have to accept copying contents by hand insofar as they are able in the time available.

Such lack of equality continues into trial proceedings since, for example, pursuant to article 9.1 of the CPC, only investigator or prosecution can request an expert conclusion. In practice therefore the defense lawyers are unable to request expert conclusions as part of the legal proceedings which puts the defense at a disadvantage.

Compounding this encroachment onto the right to prepare the defence, the court hearings themselves are often brief, even less than an hour for serious crime, with sentences of up to 20 years imposed. The Working Group implores the Government to ensure adequate upholding of the defence rights, including that defence lawyers have adequate time, resources, and access to the materials underling the charges to meaningfully represent their clients.

All these examples of significant breaches of the principle of equality of arms and are incompatible with Mongolia's obligations under articles 9 and 14 of the Covenant.

Prisons

Sentenced prisoners in Mongolia generally serve their sentences in one of the three types of prions: open prisons, closed prisons or the closed special unit of which there is only one. The Working Group notes as positive that those convicted are only sent to prisons once their sentences are final and there were no pre-trial detainees in general prisons during its visits.

Moreover, the Working Group notes as positive that prisoners under open regime are employed, receiving a salary. This is even more welcome as they are also rewarded for good behaviour and work through the system of so-called "bonus days" whereby every 30 days that prisoners work and good behaviour are counted as 40 days served. This means that per year, prisoners can accumulate up to 120 "bonus days" thus reducing their overall sentence. However, these bonus days can be deducted for breach of discipline and the Working Group is seriously concerned over the arbitrary fashion how this takes place, as the process is not formalized.

Moreover, prisoners are subject to a very strict behavioural regime, which at times is humiliating and dehumanizing. For example, all prisons have red lines painted on the floor approximately a meter from each of the cells, to maintain a distance between the prisoners and guards. Prisoners are not permitted to step on these red lines meaning that to cross the courtyard, they must always walk the perimeter. Prisoners consistently testified that a mere slip on the line would lead to a penalty being imposed and prisoners explained that stepping on the red line is often used falsely to penalize them. The Working Group is particularly concerned over the reluctance by prisoners to engage with the delegation, due to fears of reprisals in the form of deducting the "bonus days" after having spoken to the Working Group. The Working Group urges the Government to revise the current approach to the deduction of the so-called "bonus days" to formalise the process and eliminate any possibilities for abuse. Moreover, the practice of prisoners not being permitted to step over the red lines must seize immediately. It calls upon the Government to ensure that no reprisals would follow to anyone, including prisoners, who spoke to the Working Group.

The Working Group also learned of the early conditional release mechanism, stipulated in article 6.12 of the CC. The Working Group notes as positive that all prisons it visited had the Methodological Councils, which propose prisoners for early conditional release. Together with the system of "bonus days" described above, this allows, in principle, for significant reduction in the actual time served. However, there were cases when the Methodological Council refused early

conditional release without providing an explanation to the prisoner. The Working Group is also concerned over the lack of a formalized and transparent process through which the Methodological Councils make these decisions. The Government should review the practice of the Methodological Councils without delay to formalize the applicable procedures and ensure transparency in the decision-making process.

Of further concern is the suicide watch protocol in prisons which involves handcuffing those at suicide risk. While there is an obligation to check on the handcuffs at short 15-20 minutes' intervals, there is no upper limit for the duration which suicidal individuals can spend handcuffed. Similarly, handcuffs are used when prisoners are transferred between facilities, which, noting the geography of Mongolia, can take the whole day. Thus prisoners, including juveniles, are transported in vans, handcuffed and without seatbelts, causing significant risk of injury. The Working Group urges immediate review of these practices.

In terms of the conditions of detention, the efforts to improve these in some prisons are notable. However, across all prisons it visited, the Working Group was disturbed over the poor provision of food as it was consistently informed that prisoners would only receive palatable meat with their meals once per week, which would be replaced with animal intestines during the rest of week. The Working Group invites the Government to address these areas as matter of priority to ensure compliance in particular with Rule 22 of the Nelson Mandela Rules.

Special Closed Unit 405

The Working Group visited the Special Closed Unit (prison No. 405) for those serving life sentences as well as those who have received a punishment for disciplinary breaches for one year. The applicable regime is particularly strict as prisoners are held in solitary confinement and those on life sentences must serve at least 15 years under such regime. Recalling the recommendation of the Human Rights Committee to Mongolia in 2017, the Government should urgently revise this regime and ensure that solitary confinement measures applied in this facility respect the provisions of the Covenant and of the Nelson Mandela Rules, in particular Rules 43(1)(b) and 44.

The Working Group was also disturbed to learn that prisoners cannot move anywhere in the facility without hand and leg cuffs despite the large number of guards, the bars and CCTV system. It was particularly disturbed to find leg cuffs fixed to the floor in the room where prisoners would have online family meetings as well as in the library. Recalling the 2017 recommendations of the Subcommittee on Prevention of Torture to Mongolia, the Working Group urges immediate cease of these arrangements.

Finally, those held in the Closed Special Unit as means of disciplinary action are not able to work, they are not eligible for the conditional early release and cannot earn the "bonus days", a practice which the Government should revise without delay in order to meet the purpose of the sentence of imprisonment, as stipulated in Rule 4 of the Mandela Rules.

Overall, the Working Group is disturbed over the oppressive and punitive manner in which individuals in the Closed Special Unit 405 are treated. As specified by Rule 5 of the Mandela Rules, the prison regime should seek to minimize any differences between prison life and life at liberty. The Government should urgently revise the regime and treatment of those in the Closed Special Unit 405.

Criminalization of certain acts

The Working Group notes with concern a number of provisions in the national legislation that are not fully aligned with the requirements of international law in the area of prohibition of arbitrary deprivation of liberty.

Article 13.4 of the CC introduces the autonomous crime of enforced disappearance, which is welcome. However, the definition of this crime does not encompass all types of deprivation of liberty as it refers only to "unlawful detention" while an offence of enforced disappearance may be initiated as lawful deprivation of liberty and subsequently become unlawful owing to the

occurrence of other elements of the offence, as noted by the Committee on Enforced Disappearances in 2021[7].

Article 19.4 of the CC penalizes "illegal cooperation with foreign intelligence agency, agent", article 19.6 prescribes the crime of "sabotage" while article 13.14 introduces criminal libel. All of these crimes are broadly worded, and the Working Group is concerned that they could be used to interfere with the legitimate work of, for example, human rights defenders and/or legitimate expressions of opinion of individuals. In this respect, the Working Group received accounts of individuals being detained for protesting against large-scale strategic development projects, without having committed any violent crime or serious property damage.

The Working Group recalls that vaguely and broadly worded laws may have a deterrent effect on the exercise of the rights to freedom of thought, conscience and religion, freedom of opinion and expression, freedom of peaceful assembly and association, participation in political and public affairs, equality and non-discrimination, and protection of persons belonging to ethnic, religious or linguistic minorities, as they have the potential for abuse, including the arbitrary deprivation of liberty and calls upon the Government to revise these provisions.

Further, the Working Group learned of the legal restrictions adopted in the context of recent worldwide pandemic to combat the spread of COVID-19. While these provisions no longer apply, the Working Group received numerous testimony of these regulations being used to curb legitimate expressions of opinion as well as freedom of association and assembly. Lawyers of those detained for protesting against COVID-19 restrictions were also reportedly harassed and, in some cases, detained. The Working Group recalls that emergency measures introduced to address public health emergencies, such as the spread of COVID-19, should not be used to limit the fundamental rights and freedoms, including the freedoms of expression and association and assembly. In similar vein, also the 1994 Law on Organization of Public Meetings and Rallies, revised in 2017, requires prior authorization of all public gatherings, which can be used to curb legitimate exercise of freedoms of expression, association and assembly.

Finally, the possession of drugs for personal use is currently criminalized in Mongolia and the Government is urged to review this and recalls that any drug policies should be anchored in medical approach.

Detention due to infringements

Pursuant to the 2022 Law of Infringements, individuals can be sentenced to arrest, ranging from 7 days to 30 days, for petty crimes such as traffic offences. These detainees are called arrestees and serve their sentence in dedicated short-term detention facilities under the authority of the Court Decision Enforcement Agency. The Working Group visited a number of such facilities and observed generally more relaxed regime there although the red lines noted in Mongolian prisons were also used in most of the premises for arrestees. The Working Group reiterates that the application of these red lines should seize across all detention facilities in Mongolia.

Further, owing to the lack of dedicated infringement courts, the suspects in infringement cases appear before regular criminal courts. In practice, since the criminal matters take precedence, individuals usually have to wait, often for hours, until their hearing can be fitted. It is not uncommon that people would be called to the court in the morning and would not have their hearing until late afternoons without any provision for space where to wait in. Moreover, the hearings themselves usually are exceptionally short, lasting 15-20 minutes. While individuals are entitled to legal representation, this is not free of charge and so the hearings are usually conducted without a lawyer. Appeal is possible within 14 days of the decision of the court of first instance, but in practice this is rare given the short duration of the sentences imposed and arrestees are usually taken to the short-term detention facility immediately after the sentence of arrest is imposed by the court of first instance. Finally, the arrestees are liable to a fixed fee of 3800 tugriks

[7] CED/C/MNG/CO/1 at paras 16-17.

per the day spent in these short-term detention facilities. Some of the arrestees are engaged in maintenance work in the facility and then are not liable for the payment for the days worked.

The Working Group is concerned over the range of conduct, which is penalized by the Law of Infringements as it recalls that the deprivation of liberty should always be a measure of last resort. The Government should revise the range of acts punishable with arrest to ensure that the principle of personal liberty is upheld in accordance with article 9 of the Covenant. The arrestees also should not be liable for any fee in connection with their detention in such short-term detention facilities. Finally, recalling that even when detention is of short term, the safeguards against arbitrary detention are applicable, the Working Group urges effective implementation of due process guarantees and most notably the right to legal assistance.

Child Justice

Child justice is regulated by Chapter 8 of the CC and article 6.2.1 sets the general age of minimum criminal responsibility at 16. For serious crime, it is set at 14 as per article 6.2.2. The Working Group was informed of numerous measures alternative to custody widely employed in relation to children in conflict with law; it observed that individuals under the age of 16 are practically never detained by the police and pre-trial detention of children is rare, which is highly commendable.

However, the justice system has no specialized courts for youths and Justice for Children Committees play a role in overseeing the child's outcomes. It is of concern that children detained in general pre-trial detention facilities are not provided with educational activities. It is different with children who have been sentenced as they have access to schooling provision in the in the educational-disciplinary special facility in Ulaanbaatar. Children at such facilities wear school uniform and show great enthusiasm for their education. However, the facility visited was in a poor state of repair with broken toilets and shower facilities and limited classroom space. The Working Group urges immediate attention to the conditions of detention of these children.

Detention in the context of psycho-social disability

The 2000 Law on Mental Health, revised in 2013, provides the legal framework for both voluntary and involuntary admission to the National Centre for Mental Health, the central facility for persons with psycho-social disabilities. At the time of the visit, the facility had 552 patients with the official capacity of 550; it was also serving a large number of out-patients. While most of the patients spend about a month in the facility, some patients have been there for 20-25 years. Among those the Working Group was concerned to note 120 individuals who could be discharged. However, owing to lack of community-based services and these persons having no family members able to assist them with supported living, these persons remain in the Centre indefinitely. The initiative by the Centre, dating back to over 20 years, to establish assisted living arrangements for some such individuals in traditional Mongolian *gers*, situated within the compound of the Centre is highly commendable. The Working Group urges further expansion of similar assisted living arrangements and community-based services across all 21 provinces of Mongolia.

Persons who commit criminal acts but are not competent to undergo criminal proceedings due to psycho-social disabilities are placed in the closed branch of the Center. Whilst conditions are minimalist, the facility was clean and communal gathering spaces and an outdoor exercise yard are available. The stay of such persons in the Centre is subject to authorization of a judge and is periodically reviewed by the court. The review process and the decision to release the person rests with the judiciary but this decision is informed by the assessment of the Center's medical staff.

IV. Conclusion

These are the preliminary findings of the Working Group. We look forward to continuing the constructive dialogue with the Government of Mongolia over the following months while we determine our final conclusions in relation to this country visit. We acknowledge with gratitude the willingness of the Government to invite the Working Group and note that this is an opportunity for introducing reforms to address situations that may amount to arbitrary deprivation of liberty.